

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-93

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NASH-FINCH COMPANY, D/B/A JACK AND JILL STORES

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT*

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is directed to the Company's contention (Br. 6-14) that the picketing here was not peaceful and that therefore reversal of the court below would undermine the State's police power. This contention raises an issue which the court of appeals did not reach (A. 57, n. 3). Moreover, as we now show, it is based largely on unverified reports which are not part of the record, and misconstrues the relief the Board sought.

The Company contends (Br. 7) that the "picketing in the instant case was punctuated by numerous bomb threats, substantial numbers of nails in several store parking lots, the pouring of kerosene over fresh meat in display cabinets, and considerable property dam-

age * * *." It seeks to support this contention by reference to numerous complaints allegedly received by the police and fire departments. (Br. 7-9, ns. 6-11.) But there is no indication that anyone was ever convicted, or even arrested, for the acts complained of. Indeed, the Company concedes that "most of the activity referred to in the foregoing departmental records was committed by a person or persons unknown" (Br. 10).¹ Moreover, the acts which the Company now relies on were not even alleged in the affidavits which it filed in support of its prayer for injunctive relief (Br. 37-47). Accordingly, these acts, even if they occurred, cannot properly be used to characterize the picketing in this case.

In any event, the injunctive relief sought by the Board would not deprive the Company of State protection against acts of violence by pickets. The Board did not seek to nullify those portions of the State court injunction which limit the number of pickets or prohibit interference with entrance and egress or movement of traffic, but only those portions which restrained purely peaceful picketing (A. 33-34). Thus, the Company would be free to seek enforcement of the State court injunction against such misconduct as it describes in its brief. Cf. *Food Employees v. Logan Valley Plaza*, 391 U.S. 308, 312 n. 4, 321 n. 10. As this Court has made clear, however, the State's power to enjoin mass or violent picketing does not permit it

¹ So far as appears, the single conviction for an unlawful act during the picketing involved one picket who was fined \$31 for shouting an obscenity at a Company customer (Br. 10, n. 13).

to ban peaceful picketing as well. See Bd. main brief, p. 34, n. 16.²

CONCLUSION

The judgment of the court of appeals should be reversed and the case should be remanded with directions to remand to the district court for consideration on the merits.

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PETER G. NASH,
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National Labor Relations Board.

SEPTEMBER 1971.

² The Company's extended discussion (Br. 14-16) of the Board's use of its injunctive power under Sections 10(j) and 10(l) of the Act has no relevance to the issues at hand; as pointed out in our main brief (pp. 29-30, n. 14), there was no means by which the Board could have invoked either of those provisions here.